

ESTTA Tracking number: **ESTTA664720**

Filing date: **04/02/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219851
Party	Defendant Deanna Rivetti
Correspondence Address	DAVID BARLAVI LAW OFFICE OF DAVID BARLAVI 25060 AVENUE STANFORD, STE 235 VALENCIA, CA 91355-4502 UNITED STATES yinvest@pacbell.net, taxlyr@gmail.com
Submission	Answer
Filer's Name	David Barlavi, Esq.
Filer's e-mail	yinvest@pacbell.net
Signature	/David Barlavi/
Date	04/02/2015
Attachments	Super Woman of Real Estate Answer to Opposition.pdf(475805 bytes) exh a_20150402050615.pdf(174436 bytes) exh b_20150402050640.pdf(599986 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DC COMICS,

Opposer

Opposition No. 91219851

v.

DEANNA RIVETTI,

Applicant.

Serial No. 86240703

Mark: Super Woman of Real Estate

Filed: Apr. 02, 2014

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Deanna Rivetti, by her attorney, David Barlavi, Esq., respectfully Answers DC Comics’ Opposition to Applicant’s mark of “Super Woman of Real Estate.”

PART I - STIPULATIONS AND DENIALS

1. Applicant stipulates to Opposer’s allegations in paragraph one of the Notice of Opposition.
2. Applicant stipulates to Opposer’s allegations in paragraph two of the Notice of Opposition, but contends it has no relevancy to the application.
3. Applicant stipulates to Opposer’s allegations in paragraph three of the Notice of Opposition, but contends it has no relevancy to the application. Applicant’s mark is not associated with any “literary or entertainment works,” nor is Applicant attempting so trademark Superwoman’s “bodysuit.”
4. Applicant stipulates to Opposer’s allegations in paragraph four of the Notice of

Opposition, but contends it has no relevancy to the application. Opposer's mark has no connection with any goods or services that can reasonably be associated or mistaken with Applicant's real estate sales services. Opposer's mark is for advertising, entertainment and retail sales of its comic book character products, and in no way related to the sale or purchase of real estate. No consumer can reasonably confuse the two vastly different goods and services.

5. Applicant stipulates to Opposer's allegations in paragraph five of the Notice of Opposition, but contends it has no relevancy to the application. No consumer will reasonably confuse or mistake Opposer's mark of a comic book figure as being associated with, giving rise to, or endorsing the services offered by Applicant in the performance of her duties as a real estate agent under the mark.

6. Applicant stipulates to Opposer's allegations in paragraph six of the Notice of Opposition, but contends it has no relevancy to the application. No matter how famous, popular, or identifiable the Opposer's mark becomes, no consumer will reasonably confuse or mistake Opposer's mark of a comic book figure as being associated with, giving rise to, or endorsing the services offered by a real estate agent.

7. Applicant stipulates to Opposer's allegations in paragraph seven of the Notice of Opposition, but contends it has no relevancy to the application. The only relevant registration listed by Opposer in paragraph seven, "Superwoman", is stated to be connected to goods and services for "action figures and accessories therefor." No consumer will reasonably confuse or mistake Opposer's mark of this comic book action figure as being associated with, giving rise to, or endorsing the services offered by a real estate agent.

8. Applicant stipulates to Opposer's statements in paragraph eight of the Notice of Opposition.

9. Applicant stipulates to Opposer's statements in paragraph nine of the Notice of Opposition.

10. Applicant stipulates to Opposer's statements in paragraph ten of the Notice of Opposition.

11. Applicant stipulates to Opposer's statements in paragraph eleven of the Notice of Opposition.

12. Applicant stipulates to Opposer's statements in paragraph twelve of the Notice of Opposition, but DENIES Opposer's last statement in the paragraph. Applicant's mark is not inconsistent with Opposer's rights and use of its mark as described below in Part II.

13. Applicant REJECTS Opposer's implications in paragraph thirteen of the Notice of Opposition as irrelevant, ambiguous, and vague, in that any mere "similarity" between marks is in and of itself insufficient proof that any trademark infringement exists.

14. Applicant REJECTS Opposer's statements in paragraph fourteen of the Notice of Opposition as inaccurate and unfounded. "Superwoman" is a comic book character that is sold or offered to customers through entertainment mediums or retail sales. "Super Woman of Real Estate" is a mark relating to connecting sellers' real property to buyers, then facilitating in the sale of said properties. The two avenues of commerce are in no way related, and as such, no consumer will reasonably confuse or mistake any relationship, endorsement or affiliation between the two marks because their goods and services are vastly different and unrelated.

15. Applicant REJECTS Opposer's statements in paragraph fifteen of the Notice of Opposition as inaccurate, speculative, and unfounded. First, there is significant dissimilarity between the two marks, as discussed in Part II below. Second, there is no single ascertainable relationship of the goods and services, or their channels of commerce, between the two marks.

Opposer's mark involves the retail sale or entertainment promotion of a comic book character, whereas Applicant's mark involves the facilitation of sale of real estate property between buyers and sellers. Therefore, no consumer can reasonably be deceived or believe that the two marks are in any way associated with or endorsed by each other, and no harm can reasonably be expected to come to Opposer.

16. Applicant REJECTS Opposer's allegations in paragraph sixteen of the Notice of Opposition as outdated, inaccurate, and misleading. As discussed in Part II below, Applicant and Objector were engaged in good faith negotiations for months over the mark. During these negotiations, several consensual changes were made to Applicant's mark and logo. The pictures in paragraph sixteen of Objector's Notice do not reflect these consensual changes. Since the consensual agreements between the parties, all marketing materials, including websites, look as follows:



As is apparent from the pictures above, there are no similarities or relationships in the promotion or marketing of the two marks. Therefore, no consumer can reasonably believe that either mark is associated with or endorsed by the other, and no harm can reasonably be expected to come to Opposer.

17. Applicant REJECTS Opposer's statements in paragraph seventeen of the Notice of Opposition as inaccurate, speculative, and unfounded. The services offered by Applicant are in no way related to the goods and services offered through Opposer's mark. Again, Applicant's mark is related to the sale and purchase of real estate property, whereas Opposer's mark is of a comic book character. No consumer can mistake goods and services of the two marks, and Applicant's mark is not in violation of the Lanham Act.


18. Applicant REJECTS Opposer's statements in paragraph eighteen of the Notice of Opposition as inaccurate, speculative, and unfounded. The significant differences that exist between Applicant's mark, its real estate services and marketing, as compared to Opposer's comic book character mark, will prevent consumers from getting the impression that the two marks are in any way related. Therefore, Opposer's goodwill and reputation will not be effected, diluted, blurred or tarnished by Applicant's mark. Neither the mark nor the application are in violation of the Lanham Act.

19. Applicant REJECTS Opposer's statements in paragraph eighteen of the Notice of Opposition as inaccurate, speculative, and unfounded. The likelihood of harm by Applicant's "Super Woman of Real Estate" mark upon Opposer's "Superwoman" mark is negligible. As such, the Opposition should be denied, and we pray the Application be granted.

PART II - SUBSTANTIVE ARGUMENTS IN FAVOR OF APPLICATION

20. CONSENSUAL AGREEMENTS: In the months preceding the filing of the Application for the mark of “Super Woman of Real Estate,” Objector and Applicant were engaged in friendly, good faith negotiations regarding the expression of the mark. Objector explicitly consented to Applicant’s use of the mark “Super Woman of Real Estate” in an email dated April 23, 2014. (See Exhibit “A”) An objection to the use of the mark was only filed after the application. Objector is therefore barred from raising any objections to the mark under the theories of Estoppel, Waiver, Release and Acquiescence.

Furthermore, Objector, in consenting to Applicant’s use of the term “Super Woman of Real Estate” in her real estate business, has admitted that a mark in that same form would not infringe upon Objector’s trademark rights and was acceptable to Objector. Therefore, Objector is not allowed to now object to the same mark on the grounds of harm from infringement when Objector had previously acknowledged that it would not infringe on Objector’s trademark.

Regarding Applicant’s logo, , after the expression of the mark was agreed upon as described above, the parties began separate negotiations over the appearance of the logo, and several changes were made to Applicant’s logo at Opposer’s request during the logo negotiations. Although the negotiations over the logo seized when Opposer filed its opposition, Applicant made a good faith effort to meet all of Objector’s outstanding requests in order to bring the logo up to Objector’s last expressed standards as well. Applicant contends that although a full consensual agreement was not reached over the logo, (a) the appearance of the logo is not relevant to the application for the mark itself, and (b), even if the logo is to be considered by the USPTO in its evaluation of the mark, Applicant’s final logo is so distinctive

and dissimilar to any of Objector's marks or logos, that there is no chance of any consumer confusing or associating Applicant's logo with any of Objector's marks or products. The Applicant's logo consists of the letters "S" for Super and "W" for Woman placed inside of the shell of a home, representing her real estate sales business. This logo will not be confused with any of Objector's marks.

Note, consensual agreements over marks should be given great weight, and the USPTO should not substitute its judgment concerning the likelihood of confusion for the judgment of the real parties in interest without good reason. Objector consented on April 23, 2014 that Applicant's mark would not infringe on its own, and great credence should be given to that assessment.

21. NO LIKELIHOOD OF CONSUMER CONFUSION OF MARK: To establish trademark infringement, an Opposer is required to show that the proposed mark is sufficiently similar to its own existing mark in (a) sound, appearance, meaning, connotation and/or commercial impression, (b) the relatedness of the goods and services as described in the application and registration, and/or (c) ongoing trade channels, such that the average consumer is likely to confuse or reasonably mistake the two marks are related as to source or sponsorship. The Notice of Opposition has failed to meet the substantive burden of the above requirements.

(a) Regarding sound, appearance, connotation and commercial impression, similarity of the two marks in sight, sound or meaning do not automatically result in a determination that confusion is likely, even if the goods are identical or closely related. Furthermore, additions to a mark may be sufficient to avoid a likelihood of confusion if: (i) the marks in their entirety convey significantly different commercial impressions, or (ii) the matter common to the marks is

not likely to be perceived by consumers as distinguishing source because it is merely descriptive. For example, the USPTO has held in the past that the marks such as “RITZ” vs. “THE RITZ KIDS,” or “DESIGNERS/FABRIC” vs. “DESIGNER FABRICS,” or “Easy Link” vs. “Easy-Link” vs. “Easylink” are not likely to cause confusion in a consumer’s mind. Similarly, here, “Super Woman of Real Estate” vs. “Superwoman” will not be confused in the minds of a consumer because: (i) the Applicant’s mark conveys the commercial impression of a real estate agent, whereas the second mark is a well-known comic book character, and (ii) the space between “Super” and “Woman” in Applicant’s mark conveys to a consumer that the word “Super” is a descriptive adjective of the word “Woman,” and in no way conveys the impression of a comic book super hero. If one were to write the phrase “Super Breakfast,” for example, the general public would not be likely to be misled or confused into believing that one is speaking of a superhero meal.

Furthermore, if the common element of the two marks is “weak” in that it is generic or descriptive, it is unlikely that consumers will be confused unless the overall combinations have other commonalities. Here, the word “Super” is “weak” because it is separated from the word “Woman” as a generic adjective describing a competent, excellent, first-class, outstanding, marvelous, magnificent, wonderful, splendid, glorious real estate sales agent, and is unlikely to be confused with Opposer’s specific comic book character mark in a consumer’s mind.

Therefore, there is no likelihood of consumer confusion in this regard, and no trademark infringement exists by Applicant’s mark on the basis of sound, appearance, connotation or commercial impression.

(b) Regarding the relatedness of the goods and services under the marks, Applicant’s

mark is for the facilitation of the sale or procurement of real estate between buyers and sellers of real property, whereas the Opposer's mark is of a comic book character traded through entertainment mediums or retail sales. There is absolutely no relationship between the marks regarding the underlying goods or services offered, and no possibility of consumer confusion exists in this regard.

Furthermore, the meaning and connotation of a mark must be determined in relation to the named goods or services. Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the mark's claimed good and services so that there is no likelihood of consumer confusion. This is the case here because real estate sales are in no way related to comic book characters.

Therefore, there is no trademark infringement by Applicant's mark on the basis of similarity of goods and services.

(c) Regarding the ongoing trade channels of the marks, Applicant's mark is directed at potential sellers or purchasers of real property in order to establish a business relationship as their real estate agent representative. Opposer has admitted that the channels of trade for its mark involve entertainment and retail sales. The commercial channels of real estate sales hold no similarities to the trade channels of entertainment or retail sales of merchandise. There is no relationship between the marks regarding the trade channels of the marks, and no possibility of consumer confusion exists in this regard. The goods and services in question are not related or marketed in such a way that they would be encountered by the same consumers in situation that would create the incorrect assumption that they originate from the same source. For example, it is highly unlikely that a consumer of Opposer's mark will contact Applicant to purchase a comic book character action figure, or mistakenly call Applicant for customer service issues.

regarding Opposer's products, or accidentally return a defective item to Applicant instead of Opposer. The chance of consumer mistake is de minimus through trade channels. Therefore, there is no trademark infringement by Applicant's mark on the basis of overlapping trade networks.

22. "IMPULSE" BUYING VS. CAREFUL SOPHISTICATED PURCHASING: There is a further reduced likelihood of consumer confusion over marks when the end users of one mark are careful, well thought out, meticulous, diligent, methodical, sophisticated clients, versus quick, whimsical, hurried, "impulse" shoppers of the other. Real estate transactions take weeks, sometimes months to complete. There are numerous complex documents that must be reviewed and signed. There are thorough inspections of both the buyer's finances and the property that are made. The nature of the Applicant's business under her mark is quite sophisticated and each transaction long and complicated. On the other hand, retail purchasers or entertainment viewers of Opposer's product under its mark make quick, impulse purchases that require infinitely less time and due diligence. Therefore, it is significantly less likely that there will be confusion among consumers between the two marks due to this important difference.

23. SIMILAR EXISTING MARKS: The USPTO has approved the following marks and found them not to be in violation of Objector's trademark rights: "Superw♀man," "SUPERWOMAN LIFESTYLE," "IISUPERWOMANII," and "SUPERMANNAN." (See Exhibit "B"). The existence of these similar marks makes the likelihood of consumer confusion even less likely between the two marks.

PART III – CONCLUSION

Applicant respectfully submits that Opposer has not met its burden to prove that Applicant's mark would create confusion in the consumer's mind between the two marks. Applicant contends that its mark will not cause confusion or mistake in a reasonable consumer's mind with the mark of the Opposer, that no harm is likely to come to Opposer as a result of Applicant's mark, and that no trademark infringement exists. Applicant prays that the Notice of Opposition be denied, and its Application for the mark of "Super Woman of Real Estate" granted.

Respectfully Submitted,

Deanna Rivetti, Applicant
Super Woman of Real Estate

By: /s/ David Barlavi, Esq. (signed electronically)

David Barlavi, Esq.
LAW OFFICE OF DAVID BARLAVI
25060 Avenue Stanford #235
Valencia, CA 91355
(661) 775-0237
Attorney for Applicant,
Deanna Rivetti

CERTIFICATE OF SERVICE

I, David Barlavi, Esq., certify that a true and accurate copy of the foregoing
APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, for Opposition No. 91219851, was
served via First Class mail, postage prepaid, on April 2, 2015, upon Opposer's attorney of record
at the following address of record:

James D. Weinberger
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza, 6th Floor
New York, NY 10017

/s/ David Barlavi, Esq. (signed electronically)

David Barlavi, Esq.

Answer to Opposition No. 91219851

By Deanna Rivetti

Super Woman of Real Estate

Exhibit “A”

Paragraph 20

David Barlavi, Esq.

From: Kogan, Jay <Jay.Kogan@dcentertainment.com>
Sent: Wednesday, April 23, 2014 11:36 AM
To: yinvest@pacbell.net
Cc: Johnson, Catherine
Subject: RE: "Super Woman of Real Estate"

David:

The use of any artwork or Superman-related indicia including title treatment style, fonts, and color choices, when used in conjunction with the phrase "Super Woman of Real Estate" could cause consumer confusion and/or dilute the distinctive value of our Superman and related marks.

So long as Deanna uses the phrase "Super Woman of Real Estate" in lettering style, coloring, etc, and without references or reminders of SUPERMAN, so that beyond the use of the word "Super," there's nothing that directly or indirectly references SUPERMAN or any SUPERMAN related property, we should be fine.

Thanks for checking.

This email is intended as a private communication.

Jay

Jay Kogan
Vice President Business & Legal Affairs:
Publishing and Intellectual Property, and Deputy General Counsel
DC Entertainment, A Warner Bros. Entertainment Company
1700 Broadway
New York, New York 10019
T: (212) 636-5465
F: (212) 636-5595
jay.kogan@dcentertainment.com; visit us at www.dcentertainment.com

From: David Barlavi, Esq. [mailto:yinvest@pacbell.net]
Sent: Wednesday, April 23, 2014 2:03 PM
To: Kogan, Jay
Subject: RE: "Super Woman of Real Estate"

Super, thanks.

Just so you know, Deanna told me that in her conversations with you, you felt DC would be fine with her use of the phrase "Super Woman of Real Estate" as long as the words "Super" and "Woman" were separated. If this is true, I would simply like a letter from you confirming that, so we don't spin our wheels and end up upsetting DC later. Thanks.

If I have a misunderstanding, then by all means, let's talk.

Yours,

Dave :)

LAW OFFICE OF DAVID BARLAVI

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From: Kogan, Jay [<mailto:Jay.Kogan@dcentertainment.com>]

Sent: Wednesday, April 23, 2014 10:44 AM

To: yinvest@pacbell.net

Subject: RE: "Super Woman of Real Estate"

Gotcha. Will talk to you soon.

Jay Kogan

Vice President Business & Legal Affairs:

Publishing and Intellectual Property, and Deputy General Counsel

DC Entertainment, A Warner Bros. Entertainment Company

1700 Broadway

New York, New York 10019

T: (212) 636-5465

F: (212) 636-5595

jay.kogan@dcentertainment.com; visit us at www.dcentertainment.com

From: David Barlavi, Esq. [<mailto:yinvest@pacbell.net>]

Sent: Wednesday, April 23, 2014 1:37 PM

To: Kogan, Jay
Subject: "Super Woman of Real Estate"

Mr. Jay Kogan:

Hope you are doing well. This is not a litigation matter.

I am helping our client, Deanna Rivetti, form the business entities for her "Super Woman of Real Estate" here in town.

I understand you have had some nice conversations with her over the last few weeks. I would also like to have a quick chat with you about this matter.

Please call me at your earliest convenience.

Yours,

Dave :)

LAW OFFICE OF DAVID BARLAVI

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Answer to Opposition No. 91219851

**By Deanna Rivetti
Super Woman of Real Estate**

Exhibit “B”

Paragraph 23



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[ST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#) Please logout when you are done to release system resources allocated for you. OR to record: **Record 4 out of 7**[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to SS)**rd Mark** SUPERWOMAN**ods and
vices** IC 035. US 100 101 102. G & S: Business management; business administration, assistance and consultancy services relating to business management and administration

IC 039. US 100 105. G & S: Travel agency services, namely, travel arrangement and reservation services for transportation; travel brokerage, namely, travel booking agencies; travel consultancy, namely, making arrangements transportation; travel information and advisory services; organization of sightseeing tours; escorting of travelers; tour offices; and excluding any reference or matters associated with offering credit cards or credit card services

**rk
wing
de** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS**sign
arch
de** 24.17.02 - Biological symbols (male and female)
27.03.05 - Objects forming letters or numerals**ial
nber** 79060709**ng Date** September 30, 2008**rent
sis** 66A**ginal
ng Basis** 66A**olished** November 30, 2010**position
gistration
nber** 4078543**ernational
gistration
nber** 0981572**gistration** January 3, 2012

AUSTRALIA PO Box 1337 Cronulla NSW 2230 AUSTRALIA

orney of
ord Andrew B. Katz

scription Color is not claimed as a feature of the mark. The mark consists of the word "SUPERWOMAN" with the universal
Mark female symbol in place of the letter "O" in "Woman".

se of
rk SERVICE MARK

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icator LIVE

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SUPERWOMAN LIFESTYLE

Word Mark **SUPERWOMAN LIFESTYLE**
Goods and Services IC 041. US 100 101 107. G & S: Personal coaching in the field of assisting women in creating, building and marketing their own business using effective marketing strategies; Conducting workshops and seminars in the field of assisting women in creating, building and marketing their own business using effective marketing strategies; Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living. FIRST USE: 20080901. FIRST USE IN COMMERCE: 20080901
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77758906
Filing Date June 12, 2009
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Vicki Irvin Enterprises, LLC LIMITED LIABILITY COMPANY NEVADA 6333 Old Branch Ave., Suite 302 Camp Springs MARYLAND 29748

**Attorney
of Record** Drew Alia, Esq.
**Type of
Mark** SERVICE MARK
Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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IISUPERWOMANII

Word Mark IISUPERWOMANII
Goods and Services IC 009. US 021 023 026 036 038. G & S: Data recordings, namely, digital audio files, audio-visual files, and films, all pertaining to or featuring music and performances by an individual; Pre-recorded CDs and digital video discs containing audio recordings, and audio-visual recording featuring music and performances by an individual. FIRST USE: 20101209. FIRST USE IN COMMERCE: 20101209
IC 041. US 100 101 107. G & S: Entertainment services, namely the operation of an Internet web site providing streaming digital audio files and audio-visual files featuring music and performances by an individual; Entertainment services, namely live performances by an individual. FIRST USE: 20101209. FIRST USE IN COMMERCE: 20101209
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86470606
Filing Date December 3, 2014
Current Basis 1A;1B
Original Filing 1A;1B

Basis

Owner (APPLICANT) Superwoman Media, Inc. CORPORATION CANADA 104 Beckenridge Dr. Markham, Ontario
CANADA L3S3B1

**Attorney
of Record** Ryan M. Kaiser

**Type of
Mark** TRADEMARK. SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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Word Mark

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Goods and Services

IC 005. US 006 018 044 046 051 052. G & S: Dried autolyzed yeast for medical or pharmaceutical purposes; nutritional and dietary supplements, namely, dried autolyzed yeast. FIRST USE: 20111201. FIRST USE IN COMMERCE: 20131210

IC 030. US 046. G & S: Yeast, namely, dried autolyzed yeast. FIRST USE: 20111201. FIRST USE IN COMMERCE: 20131210

Standard

Characters

Claimed

Mark Drawing

Code

(4) STANDARD CHARACTER MARK

Serial Number

85101368

Filing Date

August 5, 2010

Current Basis	1A
Original Filing Basis	1B
Published for Opposition	February 1, 2011
Registration Number	4526046
Registration Date	May 6, 2014
Owner	(REGISTRANT) Belvedere Environmental's LIMITED LIABILITY COMPANY CALIFORNIA 20 Belvedere Ave Richmond CALIFORNIA 94801
Attorney of Record	David Dolberg
Type of Mark	TRADEMARK
Registrar	PRINCIPAL
Live/Dead Indicator	LIVE

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